

- (1) What is the nature and extent of claimant's injury and/or disability?
- (2) Is claimant entitled to unauthorized and future medical for this alleged temporary aggravation?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds that the Award of the Administrative Law Judge should be reversed and claimant should be denied benefits for having failed to prove the injury of December 5, 1999, resulted in any permanent impairment or work disability.

Claimant began working for respondent in March of 1995 as a driver and delivery person. Claimant drove respondent's truck to customer locations and unloaded respondent's goods at those locations. Initially, while unloading the truck, claimant used rollers and a conveyor belt.

While making a delivery at a restaurant on December 5, 1999, claimant slipped on a wet floor, falling, striking a metal shelf inside the freezer. Following the accident, claimant was referred to the Olathe Medical Center emergency room, with complaints of pain in his right rib and left shin. Claimant acknowledged at regular hearing that the shin problem had completely resolved. X-rays taken of claimant's right ribs revealed no fractures, and claimant was diagnosed as having a right rib contusion and a left leg contusion.

Claimant was later referred to Business and Industry Health Group for treatment and to physical therapy. Claimant was taken off work for one week and then returned to light duty for three weeks. The light duty claimant performed involved driving a truck, but eliminated the loading and unloading of the materials. It also included some office work. By December 27, 1999, claimant reported to Business and Industry Health Group that his pain was minimal and he was ready to return to work. He was returned to his regular employment on December 28, 1999.

Claimant testified he had no problems initially, but later, during the first day back, began feeling pain. After claimant returned to work, the company was sold to AmeriServe (formerly ProSource Distribution), and claimant was forced to unload the truck using a two-wheeler rather than the conveyor belt and rollers previously utilized.

Claimant sought no medical treatment after returning to work on December 28, 1999, through May 21, 2000, when claimant voluntarily resigned his employment with respondent. Claimant testified at regular hearing that he resigned his employment because he could no longer tolerate the loading and unloading of the freight. However, at the time of claimant's termination, claimant spoke to respondent's supervisor, Jim Hamel, advising Mr. Hamel that he was leaving respondent because he had obtained other employment. There was no mention at the time of claimant's termination of any ongoing injuries or limitations. Claimant had worked from December 28, 1999, through May 21,

2000, at his regular job without restrictions from any health care provider and without seeking medical treatment.

On May 23, 2000, claimant underwent a preemployment physical with Hasken Transportation (HIT). This job included performing local deliveries.

Claimant passed the preemployment physical with HIT with no restrictions or limitations. The examination was completely normal. At the time of the preemployment examination on May 23, claimant denied having any back injuries or disabilities, or physical limitations of any type.

Claimant began working for HIT shortly after the examination, working 60 hours a week, earning \$12 an hour. Claimant continued working this job until September 29, 2000, when he terminated his employment due to the fact he was making less money at this job and had to move to a location where his cost of living was less.

On September 30, claimant was referred to P. Brent Koprivica, M.D., by claimant's attorney for an examination. Dr. Koprivica found claimant to suffer from thoracolumbar pain, with right rib pain. He diagnosed ongoing chronic right chest wall pain and chronic thoracolumbar strain. Dr. Koprivica assessed claimant a 5 percent impairment for the thoracolumbar strain and a 5 percent impairment for the chronic right rib pain pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. He restricted claimant to lifting occasionally up to 50 pounds and advised claimant to avoid frequent or constant bending at the waist, pushing, pulling, twisting, lifting or carrying.

Dr. Koprivica reviewed the March 20, 2001 task analysis report of Michael Dreiling, finding claimant able to perform nine of the sixteen tasks. Claimant had lost the ability to perform seven of the sixteen tasks, for a 44 percent task loss.

Dr. Koprivica was first provided Respondent's Exhibit 4, which are the emergency room records from the Olathe Medical Center dated December 4, 1999. According to the emergency room records, this is the date of service; however, claimant is alleging his date of accident is December 5, 1999. The records provided no documentation of any trauma to claimant's thoracolumbar spine region. Likewise, the medical records from Business and Industry Health Group indicated no thoracolumbar complaints. The only mention of a back included the language "part of body affected, right side, back." Dr. Koprivica acknowledged that this description was consistent with where claimant's rib injuries occurred.

Dr. Koprivica testified that, at the time he examined claimant, claimant had significant thoracic and lumbar spine pain which he agreed was different than that displayed in either the original emergency room or Business and Industry Health Group records.

Dr. Koprivica was provided a copy of the May 23, 2000 physical examination indicating claimant had no limitations or injuries of any type. Based upon that normal examination and the lack of symptoms, Dr. Koprivica acknowledged claimant would have no impairment and would be in need of no restrictions or limitations.

On October 27, 2000, claimant underwent a second physical examination in preparation for his soon-to-be employment at Justin Boots in Cassville, Missouri, as a machine operator. Claimant again passed the physical examination with no limitations, no complaints and no restrictions. This examination report was also provided to Dr. Koprivica. The examination indicated claimant had normal findings involving his right ribs and his back, normal range of motion about his back and no tenderness. At the time of the examination, claimant denied having back pain or back trouble of any type. Dr. Koprivica testified that based upon this report, claimant would have no impairment and would be in need of no restrictions. He confirmed the examinations of May 23, 2000, and October 27, 2000, were inconsistent with the examination and findings on September 30, 2000.

Claimant was referred by respondent's attorney to Terrance Pratt, M.D., board certified in physical medicine and rehabilitation, for an examination on January 12, 2001. Dr. Pratt found claimant to display tenderness initially in his right lower ribs and some mild tenderness in the lower thoracic to upper lumbar region over the spinous processes. He felt claimant had sustained a fall and specific trauma to the right flank, resulting in a right chest wall contusion, and thoracolumbar findings, as well as a history of deep venous thrombosis and pulmonary emboli. He assessed claimant a 4 percent impairment to the whole body based upon the AMA Guides, Fourth Edition, and restricted claimant from lifting in excess of 50 to 60 pounds occasionally.

Dr. Pratt was also provided the physical examinations of May 23 and October 27, 2000. After reviewing those examination reports, Dr. Pratt changed his opinion from that stated in his January 12, 2001 report. In the July 11, 2001 addendum report, Dr. Pratt stated that if claimant was asymptomatic as reported in the two physical examinations, then any impairment found during Dr. Pratt's examination would have no relationship to the December 4, 1999 accident with respondent. Dr. Pratt testified that claimant's condition on January 12, 2001, should have been the same as that found on October 27, 2000, unless something happened over the interim, such as an intervening accident or some other type of event. Based upon the additional information provided from the two physical examinations, Dr. Pratt opined claimant had a zero percent impairment under the AMA Guides for the injuries suffered on December 4, 1999.

Dr. Pratt was provided a job task list as prepared by Dick Santner. After reviewing the list and the additional information, Dr. Pratt opined that claimant had no restrictions, a zero percent impairment and no limitations. He stated there would be no need for any impairment or permanent restrictions with regard to the work-related event of December 4, 1999.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g). In this instance, claimant presents two diametrical pictures of his physical limitations. On May 23, 2000, claimant presented the picture of a healthy and totally unlimited individual, ready, willing and able to work. On September 30, 2000, while being examined by Dr. Koprivica, claimant presented the picture of an individual with ongoing rib and thoracolumbar limitations and chronic pain. On October 27, 2000, claimant again presented the picture of a healthy and unrestricted individual, with no limitations and no pain. Shortly thereafter, on January 12, 2001, the injured claimant once again appeared, with rib and thoracolumbar findings.

Claimant was provided with restrictions and a task loss analysis by both Dr. Koprivica and Dr. Pratt. However, both physicians after reviewing the May 23 and October 27 physical examinations, changed their opinions, finding that based upon those examinations claimant would have no limitation from a functional standpoint and no need for restrictions or limitations from a work standpoint.

The Board finds that claimant has failed to prove that he suffered any permanent impairment as a result of the December 5, 1999 accident while employed with respondent. As stated by Dr. Pratt, the findings during the January 12, 2001 examination should have been the same or similar to the preemployment physical of October 27, 2000, unless some intervening accident or other type of event happened over the interim. Regardless, the Board finds based upon this record claimant has failed to prove his entitlement to any additional permanent disability compensation as a result of the December 5, 1999 accident. As claimant's injuries are found to have only been temporary, the Board finds claimant is not entitled to future medical treatment.

Claimant would be entitled to unauthorized medical up to the statutory limit upon presentation of an itemized statement verifying same pursuant to the statutory limitations set forth in K.S.A. 44-510h.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated January 24, 2002, should be, and is hereby, reversed, and claimant, James Sprague, is denied any permanent award against respondent, AmeriServe, and its insurance carrier, CNA RSKCo., for the accidental injury occurring on December 5, 1999. Claimant is further denied future medical treatment. Claimant is entitled to a statutory award of past medical expense and unauthorized medical upon presentation of an itemized statement verifying same.

The fees necessary to defer the expense of the administration of the Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Appino & Biggs Reporting Service, Inc. Regular Hearing Transcript	\$639.35
Dart Reporting, Inc. Deposition of P. Brent Koprivica, M.D.	\$269.90
Metropolitan Court Reporters Deposition of Terrance Pratt, M.D.	\$294.30
Deposition of Michael Dreiling	\$225.20
Deposition of Dick Santner	\$270.20

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant
Timothy G. Lutz, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation